IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WA.No. 2639 of 2007

AGAINST THE JUDGEMENT IN WPC.31405/2007 Dated 23/10/2007
.....

APPELLANT/PETITIONER:

CONYBIO HEALTH CARE (INDIA) PVT.LTD;
CONYBIO HOUSE,
JAWAHARLA NEHRU SALAI,
EKKADUTHANGAL,
CHENNAI 600097 REPRESENTED BY
M.S.NAZIM,
DIRECTOR.

BY ADV. SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENTS/RESPONDENTS:
---

1. **SALES TAX OFFICER,**
II CIRCLE ,
THRIPUNITHURA.

2. **DISTRICT COLLECTOR**,
CHENNAI.

3. **DISTRICT COLLECTOR**,
ERNAKULAM.

4. **STATE OF KERALA,**
REPRESENTED BY THE SECRETARAY (TAXES),
GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. VINOD CHANDRAN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14/11/2007,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

- -

WRIT APPEAL No. 2639 of 2007

- -

Dated this the 14th day of November, 2007.

JUDGMENT

H.L.DATTU, CJ,

The order passed by the learned Single Judge in W.P.(C) No.31405 of 2007 dated 23.10.2007 is the subject matter of this Writ Appeal.

2. In the Writ Petition, the petitioner had called in question Ext.P4 notice issued by the respondents. The said notice is under the provisions of the Revenue Recovery Act based on an order of re-assessment passed by the Assessing Authority on 30.6.2006.

3. The learned Single Judge has disposed of the writ petition solely on the ground that the petitioner was fully aware of the orders of assessment passed for the assessment year 2001-2002 and inspite of it did not choose to question the correctness or otherwise of those orders, pursuant to which Ext.P4 notice was issued by the respondents.

4. The learned Government Pleader has produced before us the assessment records for the year 2001-2002. We have carefully perused the records. During the assessment proceedings petitioner in fact had participated and had produced the books of accounts. The assessing authority, taking into consideration that the petitioner had already terminated his agency agreement with one M/s. Lotus Agencies, and since the petitioner had produced the books of accounts for the year 2001-2002, had completed the assessment and had quantified the tax liability payable

by the petitioner. The order of assessment was served on the petitioner.

5. After intercepting the goods that was despatched by the petitioner to his agent, namely, M/s. Lotus Agencies, the respondents have initiated re-assessment proceedings in exercise of their powers under Section 19 of the Act. Before completing the re-assessment proceedings, a notice was issued not only to the petitioner but also to his agent. Since the petitioner did not participate in the re-assessment proceedings, the assessing authority has completed the re-assessment proceedings. Though the said order is served on the petitioner, he did not choose to prefer any appeal against the said order. Since the petitioner did not pay the quantified tax liability, the assessing authority has initiated revenue recovery proceedings by issuing Ext.P4 notice. It is at that stage, the petitioner approached this court.

6. The learned Single Judge has rejected the writ petition, solely on the ground that though the petitioner was served with orders of re-assessment passed by the assessing authority and the notice issued pursuant thereto, had not cared to question the said order before an appropriate forum by filing an appeal and therefore the assessing authority was justified in initiating the revenue recovery proceedings.

7. Against the findings and the conclusions reached by the learned Single Judge, petitioner is before us in this appeal.

8. Sri. K.U.Vijayan, learned counsel appearing for the appellant would submit that the petitioner is only a principal of M/s. Lotus Agencies. The assessing authority, according to the learned counsel, could not have passed any

orders of re-assessment against the petitioner and therefore could not have issued the demand notice directing the petitioner to pay the amount due under orders passed in the re-assessment proceedings. In our opinion, this contention of the learned counsel for the petitioner cannot be accepted by us. Before the assessing authority, at the time of completion of the assessment proceedings petitioner in fact had produced the books of accounts for the year 2001-2002. He was fully aware of the orders of assessment so passed. Thereafter the assessing authority after issuing a notice to the petitioner under Section 19 of the Act, had completed the re-assessment proceedings. For the reasons best known, the petitioner did not participate in the re-assessment proceedings, though he was served with notice under Section 19 of the Act. Since the assessee did not object to the proposal made in the re-assessment proceedings, the assessing authority had confirmed the proposal made while completing the proceedings under Section 19 of the Act. If for any reason the petitioner was aggrieved by the orders passed by the assessing authority in exercise of powers under Section 19 of the Act, he ought to have filed appropriate appeal as envisaged under the Act. Since the petitioner had not called in question the correctness or otherwise of the orders of re-assessment and since there was no stay order passed by any superior forum, the assessing authority was justified in initiating the revenue recovery proceedings against the assessee. Keeping all this in view, the learned Single Judge, in our opinion has rightly rejected the Writ Petition filed by the petitioner. Therefore, we do not intend to interfere with the orders passed by the learned Single Judge. Accordingly we pass the following:

Order

(i) The Writ Appeal is rejected.

(ii) However, we grant liberty to the petitioner, if he so desires, to question the correctness or otherwise of the re-assessment order passed by the assessing authority within fifteen days from today.

(iii) If the assessee files an appeal within the time granted by us, the appellate authority shall decide the appeal on merits without reference to the period of limitation.

(iv) All other contentions are left open.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

sb/dk.